

REMARKS

Claims 1-39 are pending in the present Application. In view of the foregoing amendments and following remarks, Applicants respectfully request reconsideration of the rejections and allowance of the Application.

Amendments to the claims

Without conceding to the Examiner's rejection and for the purpose of expediting prosecution, Applicants have amended independent claims 1, 10, 19, 20, 30, and 39. As amended, claim 1 includes "transferring the at least one memory page using the identification from the first storage filer to a second storage filer while file operations are suspended during the optimal time." Independent claims 10, 19, 20, 30, and 39 have been amended in a similar, albeit contextually appropriate, manner as claim 1. The amendment to exemplar claim 1 is supported, at least, by paragraphs [0127] and [0128] of the published specification. Paragraph [0127] discloses "the SAN filer 1360 determines an optimal time to temporarily stop the file operations of the CIFS service ... the SAN filer 1360 stops the file operations of the CIFS service at the determined time." Thereafter, "the SAN filer 1360 transfers the memory pages of file service data based on the virtual server ID for the CIFS service to the target SAN filer 1360," as disclosed in paragraph [0128].

Applicants reserve the right to pursue any or all of the original claims at a later time, either within the present Application or in future application(s). Applicants do not believe any new matter has been introduced by these amendments.

Rejections under 35 U.S.C. § 103

The Examiner asserts that claims 1-39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cramer (U.S. Pat. No. 6,920,579) [hereinafter “Cramer”] in view of Washington (U.S. Pat. No. 5,860,116) [hereinafter “Washington”], and further in view of Berkowitz *et al.* (U.S. Pub. No. 2003/0149736) [hereinafter “Berkowitz”]. *Office Action*, 2-3. Applicants respectfully traverse.

The cited references fail to teach transferring a memory page using an identification from a first storage filer to a second storage filer while file operations are suspended.

As amended, independent claim 1 sets forth “transferring the at least one memory page using the identification from the first storage filer to a second storage filer **while file operations are suspended** during the optimal time” (emphasis added).

Regarding claim 1, the Examiner admits that “Cramer does not explicitly teach transferring the at least one memory page using the identification from the first storage ... to a second storage ...,” but asserts that “Washington does teach this limitation.” *Office Action*, 3 (citing *Washington*; col. 2, lines 29-36). Applicants note the Examiner’s omission of the word ‘filer’ from this assertion, as claim 1 actually sets forth “transferring the at least one memory page using the identification from the first storage **filer** to a second storage **filer**” (emphasis added). Applicants respectfully remind the Examiner that “[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

The Examiner further asserts that “[i]t would have been obvious ... to modify Cramer and Washington with determining an optimal time to suspend

file operations of the file service ... as described by Berkowitz at (paragraph 64).” *Office Action*, 4. The Examiner states that “Berkowitz teaches ... at paragraph 64, ... instruct[ing] **writers to stop writing and wait a predetermined amount of time** to allow existing access requests to complete before proceeding ... to effectively communicate with writers such that the **writers do not attempt to access or modify a volume of information while a copy is being made** and to prevent access updates or inaccurate point-in-time copy information.” *Office Action*, 4 (emphasis added).

Applicants respectfully point out that, as amended, independent claim 1 sets forth “transferring the at least one memory page ... **while file operations are suspended**” (emphasis added). Transferring a memory page while file operations are suspended is clearly contrary to the teachings of *Berkowitz* as described by the Examiner, since *Berkowitz* instructs **writers to not attempt to access or modify a volume of information** (e.g., transfer a page) while access requests complete. See *Office Action*, 4. Applicants respectfully note that in order “[t]o support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention.” *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985).

Based at least on the remarks herein, Applicants believe that independent claim 1 is patentable over the cited references. Additionally, as independent claims 10, 19, 20, 30, and 39 include similar elements to those of independent claim 1, claims 10, 19, 20, 30, and 39 are likewise patentable for at least the same reasons.

Applicants respectfully disagree with the Examiner’s rejection of claims 2-9, 11-18, 21-29, and 31-38, in that claims 2-9, 11-18, 21-29, and 31-38 depend from otherwise allowable claims as discussed in detail herein. “A claim in dependent

form shall be construed to incorporate by reference all the limitations of the claim to which it refers.” 35 U.S.C. § 112 ¶ 4. As such, Applicants contend that dependent claims 2-9, 11-18, 21-29, and 31-38 are allowable over *Cramer* in view of *Washington*, and further in view of *Berkowitz* for at least the same reasons as the independent claim from which they depend.

CONCLUSION

The rejection under 35 U.S.C. § 103(a) of claims 1-39 is overcome, at least, because the cited references fail to expressly or impliedly suggest the claimed invention. For example, the cited references do not disclose transferring a memory page using an identification from a first storage filer to a second storage filer while file operations are suspended during an optimal time.

Based on the foregoing remarks, Applicants believe the rejection to the claims has been overcome, and that the present Application is in condition for allowance. The Examiner is invited to contact Applicants' undersigned representative with any questions concerning this matter.

Respectfully submitted,
Jonathan Scott Goldick *et al.*

March 2, 2009

By: _____ / Ian C. Schick / _____
Ian C. Schick, Ph.D. (Reg. No. 63,293)
Carr & Ferrell LLP
2200 Geng Road
Palo Alto, CA 94303
T: 650.812.3400
F: 650.812.3444